

SENTENCING COMMISSION MINUTES

Committee		Utah Sentencing Commission – Annual Meeting
Date		Wednesday, April 6, 2011
Time		8:30 a.m. – 4 p.m.
Location		Utah State Capitol Complex, Senate Bldg., Copper Room
Members Present		Judge Kevin Allen, Patrick Anderson, Paul Boyden, David Brickey, , Judge Janice Frost, Curt Garner, Rep. Richard Greenwood, Judge Thomas Low, Dan Maldonado, Senator Ben McAdams, Mark Moffat, Judge Gregory Orme, Tom Patterson, Chief Ed Rhoades, Rep. Jennifer Seelig, Sy Snarr, Carlene Walker, Sheriff James Winder
Members Excused		Marlene Gonzalez, Ron Gordon, Benjamin McMurray, Judge Ric Oddone, Doyle Talbot, Kirk Torgensen,
Staff & Visitors		Staff: Jo Lynn Kruse, Dr. Ben Peterson, Jacey Skinner, Doreen Weyland Visitors: Cliff Butter, Rep. Lorie Fowke, Senator Jon Greiner, Mke Haddon, Judge Paul Maughan
Agenda Item		Welcome and Approval of Minutes
Notes		Carlene Walker called the meeting to order and welcomed everyone. Paul Boyden made a motion to approve the January minutes. Sy Snarr seconded the motion which passed unanimously .
Agenda Item		Legislative Session Penalty Changes
Notes		<p>This year there were 10 new 2nd degree felonies created, 4 new 3rd degree felonies, 2 new Class A misdemeanors, 11 new Class B misdemeanors, and 1 new Class C misdemeanor.</p> <p>The Sentencing Commission no longer requires sunset reauthorization. During the review of the Commission, the Legislature thanked the Sentencing Commission for their work and determined that the Commission provided a valuable service to the state and would not require further review.</p> <p>The following legislation was discussed:</p> <p>HB 116 - Guest Worker Program Act HB 497 - Utah Illegal Immigration Enforcement Act HB 370 - Bail Bond Amendments This bill was introduced and passed quickly at the end of the session. Part of the bill is concerning and will need to be reviewed during the interim.</p> <p>HB 52 - Limitation of Actions- Criminal Offenses HB 202 - Death Penalty Procedures Act HB 23 - Controlled Substance Modifications HB 192 - Controlled Substances Advisory Committee Amendments HB 232 - Drug Paraphernalia Definition Amendments HB 48 - Fingerprints of Juveniles Amendments regarding the expungement of fingerprints may be made in the near future.</p> <p>SB 28 - Alcohol or Drug Related Offense Amendments HB 71 - Victim Rights Amendments HB 266 - Restitution Amendments HB 324 - HIV Testing of Alleged Sex Offenders HB 374 - Domestic Violence Amendments SB 159 - Sex Offender Registry Revisions</p> <p>Doreen Weyland discussed the 2011 Legislation Tracking Report of bills reviewed by the Sentencing Commission during the session. Historically the Sentencing Commission has taken a position of either support or opposition to each bill. This year, the Sentencing Commission took "no position" on many pieces of legislation. If the penalty associated with the legislation was appropriate, and the policy was neither necessary, particularly beneficial to our criminal justice system or detrimental to the criminal justice system, the Commission did not take a position on the bill, with the intent to send the message</p>

	to the legislature that the bill wasn't necessary, but wouldn't be harmful if passed. The intent is to make the support or opposition of the Commission more meaningful. Page five of the report included a scorecard of bills reviewed by the Commission.
Agenda Item	Parole Study
Notes	<p>This study is the result of a multi state project headed by the Bureau of Justice Statistics (BJS) and Justice Research and Statistics Association (JRSA) for Utah, Oregon, New Mexico, Wyoming and Maine, regarding factors predicting parole violations and revocations. Dr. Ben Peterson discussed Utah's statistics and findings.</p> <ul style="list-style-type: none"> • 75% of prisoners discharged in a given year are released to parole. • Of the 6,805 prison admissions in 2007 and 2008, 47.1% were parolees returning to prison and 38.8% returned exclusively for violating conditions of parole. • 66% of parolees will be returned to prison within 3 years. (50% of those returned for violations of conditions without new conviction) • Utah parole return rate is higher than the national average. <p>The study includes a survey of individuals working in the parole system and an analysis of a cohort of parolees released in 2005 and 2006. Respondents of the survey answered questions on the following: parole supervision goals, factors that help offender's success on parole, seriousness of common parole violations, and causes of parole violations.</p> <p>This project represents an important update on past work and can serve to inform policy decisions in the parole system moving forward. Having effective options with consequences that protect the public while providing a balance between offender accountability and helping the offender change and be successful on parole will become more important. This could include a parole violator center(s) and/or more "halfway back" programs and use of the jails for short (but certain) consequences.</p> <p>Future research will include: further analysis of current parole cohort, analysis of offenders released from prison without supervision during the same time period, parole termination survey, and analysis of the "diagonal" area of the sentencing matrix.</p>
Agenda Item	Prison Population/Capacity Policies
Notes	<p>Section 64-13-38(1) of the Utah Code states:</p> <p>"When the executive director of the department finds that the inmate population of the Utah State Prison has exceeded physical capacity for at least 45 calendar days, the executive director may (a) notify the governor that an overcrowding emergency exists and provide him with information relevant to that determination; and (b) notify the Board of Pardons and Parole of the existence of the overcrowding emergency so that the board may commence emergency releases pursuant to Subsection (2)."</p> <p>Currently the prison is over capacity on the male side of the prison, but the female side is not at capacity. The law does not specify whether "physical capacity" refers to the prison population as a whole, or is gender unit specific. David Brickey made the motion to form a subcommittee to address the issue and provide feedback to the entire CCJJ Commission in June. Mark Moffat seconded the motion, which passed unanimously.</p>
Agenda Item	Recognition of Past Commission Members
Notes	<p>Presentations were made in recognition of outgoing members for their dedicated service and support. Judge Maughan served from 2003 - 2011, Representative Lorie Fowlke from 2008 - 2010, and Senator Jon Greiner from 2007 - 2010.</p>
Agenda Item	Sentencing and Length of Stay Statistics
Notes	<p>Cliff Butter presented information about sentencing, length of stay and admission populations for the Department of Corrections.</p> <p>Cliff presented the most recent statistics on the following:</p>

	<ul style="list-style-type: none"> • Average yearly incarcerated population and changes in average yearly incarceration. • Incarceration rate: U.S. total, versus Western States total, versus Utah. Utah is always the lowest in the Western States. Utah is the 7th lowest in the Nation. • Property crime rate per 100,000, Utah versus U.S. Note that Utah follows the same model as the nation on property crime, but our violent crime rates are quite a bit lower than the national average. • The Index Crime Rate graph shows Utah's use of incarceration is not in line with the crime index. Factors that affect the rate are increased penalties and the creation of more felonies. • The Department of Corrections is seeing an increase in felony sentencing in the last couple years, which affects how we plan for future facilities. • Percent of felonies to prison – Prior to 1995, approximately 25% of all felonies were sentenced to prison, after the court consolidation in 1995-1996; the rate has increased to 32%. Rates have remained consistent since that time. • Total prison admissions went down this year by 5.8%. • The total new commitment prison admissions have increased significantly, which greatly affects bed space. For example, new commitments will stay longer than those admitted on a technical violation (violations of the conditions of parole). • The lack of sex offender treatment funding may impact length of stay. In 1996, when the population was 864 sex offenders, was the last time we received any sex offender treatment funding. The sex offender population has more than doubled and we don't have any additional treatment resources.
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Agenda Item	2011 Adult Sentencing Guidelines
Notes	<p>Jacey discussed adjustments that need to be made to the Adult Sentencing and Release Guidelines after the legislative session.</p> <p>Specifically:</p> <ul style="list-style-type: none"> - Adding 2nd degree Possession only to the Crime Column Listing - Adding 3rd degree Possession only to the Crime Column Listing - Adding §61-1-21 Utah Uniform Securities Act Violation to the Crime Categories as "other" - Amending §76-5-107.3 from "Terroristic threat" to "Threat of terrorism" in the Crime Categories - Adding §76-9-201 Electronic Communication Harassment to the Crime Categories as "person" <p>Tom Patterson made the motion to classify Electronic Communication Harassment to the Crime Category as <u>person</u> rather than other. Sy Snarr seconded the motion. The motion carried with three opposing votes: Patrick Anderson, Mark Moffat and Curt Gamer.</p> <ul style="list-style-type: none"> - Adding §76-10-1205 Inducing acceptance of pornographic material to the Crime Categories as "other" - Fixing the code reference for §76-10-2801 Vehicle compartment for contraband from the incorrect, §76-10-2701 - Adding §76-1-2901 Transporting or harboring aliens to the Crime Categories as "other" - Adding §7-27-21.5 Failure to Register as a Sex or Kidnap Offender to the Crime Categories as "other" - Fixing the code reference for §76-5b-201 Sexual Exploitation of a Minor and Attempt, Conspiracy, or Solicitation to Commit Sexual Exploitation of a Minor from the previous, §76-5a-3 - Adding §76-5b-202 Sexual Exploitation of a Vulnerable Adult and Attempt, conspiracy, or Solicitation to Commit Sexual Exploitation of a Vulnerable Adult to the Crime Categories as an "H" and an "I" respectively - The Commission discussed the issue of when someone is convicted of an offense, but before the offender is sentenced for the offense they commit a new offense and are sentenced for that offense before the first. The Commission discussed whether that offense should be counted as a prior offense for purposes of sentencing, or since it occurred after the offense that they are currently being sentenced for, should it not be counted as part of the criminal history? Sheriff Winder made the motion to support existing instructions in the guidelines. Judge Low seconded the motion which passed unanimously.

	Chief Rhoades made the motion to approve all changes as discussed by Jacey. Curt Garner seconded the motion which passed unanimously .
Agenda Item	Study Items for Upcoming Year
Notes	<p>Subcommittee to work on the prison capacity issue: Sy Snarr, Tom Patterson, Curt Garner, Mike Haddon and Ron Gordon.</p> <p>Subcommittee to approach legislature to increase sex offender treatment at prison: Tom Patterson, David Brickey, Sheriff Winder, Mark Moffat, and Representative Seelig.</p> <p>Study the issue of sexual exploitation of a minor as an offense requiring lifetime registration. As well as the use of a plea held in abeyance used to avoid registration requirements.</p> <p>Look into the cost of having Mental Health courts statewide, the same as drug courts are. Include Juvenile Mental Health courts.</p> <p>Methods to improve and reduce recidivism at the point of reentry.</p> <p>Monitor private probation license standards. Subcommittee: Judge Low, Sheriff Winder.</p> <p>If Commission members have items to study or consider during the interim, they should let Jacey know.</p> <p>The Commission will provide opportunities for Commission to visit and learn about various aspects of the criminal justice system. If there is something specific that Commission members would like to observe, they should contact Jacey.</p>
Next Meeting	The next meeting will be on June 1, 2011, Utah State Capitol Complex, Senate Bldg., Copper Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ